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Attorneys for Plaintiff  
Tracy A. Horstkotter

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

TRACY A. HORSTKOTTER,	)	Case No.: 2:23-cv-01654-EJY
	)	
Plaintiff,	)	<del>STIPULATION AND PROPOSED</del>
	)	ORDER FOR THE AWARD AND
vs.	)	PAYMENT OF ATTORNEY FEES
	)	AND EXPENSES PURSUANT TO
MARTIN O'MALLEY, <sup>1</sup>	)	THE EQUAL ACCESS TO JUSTICE
Commissioner of Social Security,	)	ACT, 28 U.S.C. § 2412(d) AND
	)	COSTS PURSUANT TO 28 U.S.C. §
Defendant.	)	1920
	)	
	)	

TO THE HONORABLE ELAYNA J. YOUCHAH, MAGISTRATE JUDGE  
OF THE DISTRICT COURT:

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<sup>1</sup> Martin O'Malley, the new Commissioner of Social Security, should be substituted as the defendant in this suit per F.R.C.P. Rule 25(d). No further action need be taken per 42 U.S.C. § 405(g).

1 IT IS HEREBY STIPULATED, by and between the parties through their  
2 undersigned counsel, subject to the approval of the Court, that Tracy A.  
3 Horstkotter be awarded attorney fees in the amount of one thousand one hundred  
4 dollars (\$1,100.00) under the Equal Access to Justice Act (EAJA), 28 U.S.C. §  
5 2412(d), and costs in the amount of zero dollars (\$0.00) under 28 U.S.C. § 1920.  
6 This amount represents compensation for all legal services rendered on behalf of  
7 Plaintiff by counsel in connection with this civil action, in accordance with 28  
8 U.S.C. §§ 1920; 2412(d).

9 After the Court issues an order for EAJA fees to Horstkotter, the  
10 government will consider the matter of Horstkotter's assignment of EAJA fees to  
11 Marc Kalagian. The retainer agreement containing the assignment is attached as  
12 exhibit 1. Pursuant to *Astrue v. Ratliff*, 130 S.Ct. 2521, 2529 (2010), the ability to  
13 honor the assignment will depend on whether the fees are subject to any offset  
14 allowed under the United States Department of the Treasury's Offset Program.  
15 After the order for EAJA fees is entered, the government will determine whether  
16 they are subject to any offset.

17 Fees shall be made payable to Horstkotter, but if the Department of the  
18 Treasury determines that Horstkotter does not owe a federal debt, then the  
19 government shall cause the payment of fees, expenses and costs to be made  
20 directly to Law Offices of Lawrence D. Rohlfig, Inc., CPC, pursuant to the  
21 assignment executed by Horstkotter.<sup>2</sup> Any payments made shall be delivered to  
22 Law Offices of Lawrence D. Rohlfig, Inc., CPC.

23  
24  
25 <sup>2</sup> The parties do not stipulate whether counsel for the plaintiff has a cognizable lien  
26 under federal law against the recovery of EAJA fees that survives the Treasury  
Offset Program.

1 This stipulation constitutes a compromise settlement of Horstkotter's  
2 request for EAJA attorney fees, and does not constitute an admission of liability on  
3 the part of Defendant under the EAJA or otherwise. Payment of the agreed amount  
4 shall constitute a complete release from, and bar to, any and all claims that  
5 Horstkotter and/or Marc Kalagian including Law Offices of Lawrence D. Rohlring,  
6 Inc., CPC, may have relating to EAJA attorney fees in connection with this action.

7 This award is without prejudice to the rights of Marc Kalagian and/or the  
8 Law Offices of Lawrence D. Rohlring, Inc., CPC, to seek Social Security Act  
9 attorney fees under 42 U.S.C. § 406(b), subject to the savings clause provisions of  
10 the EAJA.

11 DATE: January 5, 2024 Respectfully submitted,

12 LAW OFFICES OF LAWRENCE D. ROHLFING, INC., CPC

13 /s/ *Marc V. Kalagian* <sup>3</sup>

14 BY: \_\_\_\_\_  
15 Marc V. Kalagian  
16 Attorney for plaintiff  
17 TRACY A. HORSTKOTTER

18 DATED: January 5, 2024

19 JASON M. FRIERSON  
20 United States Attorney

21 /s/ *Edmund Jack Darcher*

22 \_\_\_\_\_  
23 EDMUND JACK DARCHER  
24 Special Assistant United States Attorney  
25 Attorneys for Defendant  
26 MARTIN O'MALLEY, Commissioner of Social  
Security (Per e-mail authorization)

<sup>3</sup> Counsel for the plaintiff attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

**ORDER**

Approved and so ordered:

DATE: January 8, 2024

  
\_\_\_\_\_  
THE HONORABLE ELAYNA J. YOUCHAH  
UNITED STATES MAGISTRATE JUDGE